

agreement with KENR Management, albeit at much higher brokerage rates. The new, one year contract also contained a 30 rather than 90 day termination notice.

During the period between its original notification and the March 3, 1995 sale of KENR, KENR Management had sought another station with which it would enter into a long-term time brokerage agreement--or which it might purchase--and upon which it could place its international language programming.

In late December, 1994, Chameleon (a corporation separate from KENR Management, but with the same stockholders) entered into negotiations with KIOX, AM and FM, Bay City, Texas, for the purchase of its AM facility. Although available, KIOX-AM was not ideal. Bay City does not contain a large foreign-language population and KIOX-AM's signal from its Bay City location did not reach a sufficient amount of Chameleon's international language audience to make operation of KIOX-AM at its existing power and location economically viable. Moreover, KIOX insisted that, although the transmitting towers would be sold to Chameleon as part of the bargain, KIOX must retain use of the present site for its own FM broadcasts by means of a lease-back arrangement with Chameleon.

At that point in time, however, Chameleon anticipated continued operations for a year under the existing brokerage agreement with KENR. During that year, Chameleon intended, in an orderly fashion, to purchase KIOX-AM, find a new transmitter site closer to Houston so it could continue to serve its

international audience, and to apply to the Commission for a permanent change of its transmitter location to that site.

Chameleon did locate an appropriate site in rural Harris County--a site which was substantially nearer to Houston--and began negotiations to obtain that site for its new station's use.²

On April 9, 1995, Chameleon's orderly plans were upset when it received a notice that Salem was terminating KENR's one-year brokerage agreement with Chameleon effective May 6, 1995. At that point, Chameleon found itself faced with a complete loss of the audience it had built up on KENR.

In response, Chameleon completed negotiations to purchase KIOX-AM. The FCC approved the transfer on April 20, 1995 and, on April 22, the transfer was consummated. At the same time, Chameleon applied for a new call sign: KFCC, which was subsequently granted.

On April 21, 1995, with no transmission site to call its own, Chameleon applied to the Commission for and on May 5, 1995, the AM Branch granted Chameleon a Special Temporary Authorization (STA) to move its transmitter to the location it had found in Harris County. Exhibit 1.

Relying on this granted authorization, Chameleon secured rights to the new transmitter site and went on the air with an authorized power of 1,000 watts daytime, and 100 watts at night. While increasing the station's coverage in Houston,

²The new transmitter site relieves a first adjacency overlap with station KWHI. The new transmitter site also increases the station's grade B contour over Houston, Texas from approximately 10% to 80%.

broadcasts from the new site--at the originally authorized power--continued to provide adequate coverage³ to the few, if any, listeners in Bay City who might have chosen to listen.⁴

On May 12, 1995, in response to complaints from Salem (under the name of its subsidiary, "South Texas Broadcasting, Inc.")⁵ that KFCC's new transmitter site produced interference with another station, the Commission revised the STA to provide for a reduced authorized power of 300 watts daytime and 50 watts at night. Exhibit 2.

On May 18, 1995, the FCC's AM Bureau notified Chameleon that it was rescinding the previously granted STA because, with the lower authorized power it had unnecessarily forced

³While, with the 1 kw STA operation, KFCC did not place a 5 mV/m contour over Bay City, it did place a measured 2.0 mV/m signal across Bay City, giving the city a substantial and interference-free signal.

⁴Prior to Chameleon's purchase of KIOX-AM, the station provided scarcely any local or programming unavailable elsewhere. It merely simulcast programming from its FM sister or rebroadcast the audio portion of CNN Headline News.

⁵It is questionable whether Salem even had standing to object on the basis of interference since Salem was not, itself, subject to any interference. Rather, Salem had a vested interest in seeing Chameleon fail so that Salem could poach Chameleon's foreign-language programs, "cherry-picking" those with a "Christian" format or which it found attractive for other reasons, and rejecting those programs directed at audiences it found less attractive. In fact, even before it terminated Chameleon's brokerage contract with KENR, Salem had already persuaded producers of Chameleon's Vietnamese program to desert Chameleon and remain with Salem after the termination of Chameleon's contract.

Salem's complaint concerned alleged interference with KWHI. Tom Whitehead, owner of KWHI, was completely unaware of anything having to do with KFCC's STA until he was contacted by Chameleon. In a phone conversation with FCC staff member Fred Lundgren, Mr. Whitehead indicated he had received no complaints from listeners and had filed no complaints with the FCC. Much later, KWHI inexplicably did file a complaint, despite his previous assurances to the contrary, and despite the fact that KFCC's operation from its STA site actually decreases total interference with KWHI.

upon Chameleon, the station no longer covered its city of license, Bay City.⁶ Exhibit 3.

On May 25, 1995, Chameleon's President, Don Werlinger, came to Washington and met with the Chief of the AM Branch, James Burtle, seeking a restoration of the STA. Burtle was unsympathetic and told Werlinger, "the phone has been ringing off the wall" with complaints and stated, "this situation could cost me my job." When Werlinger asked the source of the complaints, Burtle told him they had come by telephone and added, "It doesn't matter. Get your [expletive] back to Texas right now! And move that transmitter site back to Bay City!"

Mr. Werlinger, who had acted in reliance on the Commission's previous grant of authority, realized that to carry out Burtle's latest directive would cause great and irreparable detriment to his company--it would, indeed, put Chameleon out of business. In light of the gravity of the situation,

Werlinger went to see Burtle's supervisor, Larry Eads, the Chief of the Audio Services Division, on May 25, 1995. After hearing Werlinger's story, Eads wrote at the bottom of the rescission order "I hereby stay the execution of this order." See Exhibit 3.

Meanwhile, on August 4, 1995, Chameleon filed on FCC Form 301 an application to make the STA site the station's permanent transmitter location. Simultaneously, Chameleon sought an extension of the STA.

⁶Although the coverage to Bay City no longer quite met the technical requirement of 5 mV/m strength over Bay City, the Commission has repeatedly authorized STA operations that, in a similar manner, do not meet this requirement. See, eg:

Next, Chameleon received a letter dated July 25, 1995 from Eads seeking further information concerning Chameleon's transmitter site. Eads' letter notes that objections to the STA had been filed by South Texas Broadcasting (a subsidiary of Salem Communications)⁷ and KWHI.⁸

Eads' letter further stated that it has been the policy of the Commission's staff to require that, when a site loss is used as a justification for an STA, the loss should be beyond the Appellant's control.⁹ Eads' letter then asked for specific details concerning how Chameleon "lost" the Bay City transmitter site; a demonstration that no better site existed; details of the lease-back arrangement between KFCC and Landrum (the former owner); and further details concerning possible construction of a tower on the new transmitter site. Eads' letter also extended the expiration of the STA until August 4, 1995 to allow time for Chameleon to respond to Eads' letter.

On August 4, Chameleon sent Eads a nineteen-page letter responding in detail to each of Eads' inquiries and providing specific information to substantiate that Chameleon's loss of its original transmitter site was a necessary condition of the

⁷South Texas later withdrew its objection [Exhibit 4].

⁸Although Whitehead has not yet formally withdrawn his objection, he has given Chameleon verbal assurances that he will not oppose KFCC's application for permanent change of city of license [Exhibit 8, paragraph 9] --a change that would produce signal propagation similar to that produced by operations under the present STA while affording additional protection to KWHI.) Additionally, irrespective of the KWHI complaint regarding the KFCC STA site, the 300 watt operation of KFCC dramatically reduces previously licensed overlap between the two stations.

⁹This requirement is not mandated by the Commission's rules but, rather, has merely been the Bureau's usual practice.

original sale of the station to Chameleon; it was, therefore, as Chameleon understood the term, beyond Appellant's control and, thus, involuntary.

On August 11, 1995, Eads wrote what is evidently the first of two letters to Werlinger, both with the same date. The first letter stated that Werlinger had not responded to Eads' July 25th letter, declaring that the STA had now expired, and ordering KFCC to cease operations from the STA site. In another letter, also dated August 11, 1995 and, evidently, written later the same day, Eads acknowledges receipt by fax of Werlinger's August 4th letter. This second letter reinstates the STA and extends it pending further consideration of Werlinger's August 4th letter.

On September 1, 1995, Salem--through its subsidiary, South Texas Broadcasting--withdrew its objections to KFCC's STA and it withdrew its request that the STA be cancelled.

Exhibit 4. At the same time, South Texas Broadcasting assured the Commission that it would not object to Chameleon's Form 301 application for a permanent change of transmitter site.

Chameleon's 301 application, meanwhile, was placed on public notice on September 6, 1995. Thus, the 30-day period during which oppositions might be filed to Chameleon's proposed permanent site change was cut-off on October 6, 1995. Exhibit 5. So far as Chameleon has been able to determine, there were no objections filed with the Commission regarding the 301 application.

On September 8, 1995, in a letter signed by Stuart B. Bedell "for Larry Eads", Bedell complains that the responses provided by Werlinger on August 4th were not sufficient. Bedell then cancelled the STA and ordered KFCC to immediately cease operations from the STA site. Exhibit 6.

On September 22, 1995, Werlinger wrote to Mass Media Bureau Chief Roy Stewart seeking reconsideration of Bedell's September 8th letter pending approval of its Form 301 application. Exhibit 7, page 4. On October 3, 1995, Werlinger met in person with Stewart who initially indicated at least a temporary extension of the STA was in order. However, after meeting in private with Burtle, he emerged from his office and told Werlinger that Chameleon's request for reconsideration was refused, stating, "This situation is already with Enforcement and I'm not going to interfere with them now." Stewart then verbally ordered an immediate cessation of Chameleon's operations at the STA site.

On October 6, 1995, Chameleon appealed the Cancellation of the STA to the U.S. District Court of Appeals for the D.C. Circuit and moved that Court to stay the STA cancellation pending a full hearing of the issue on their merits.

The FCC's General Counsel's office filed a Response with the Court on October 12, 1995 accompanied by a letter dated the previous day, October 11, 1995, from Linda Blair, Acting Chief of the Audio Services Division--which letter once again stayed the STA cancellation. Exhibit 8. The General Counsel's Response stipulated that Blair's stay would remain in effect

until Chameleon was afforded a full hearing on the merits before the Commission and, therefore, a issuance of a stay by the Court would be unnecessary.

On October 24, 1995, acting on those assurances by the general Counsel, Chameleon moved the Court to withdraw its motion without prejudice and, on October 26, 1995, the Court granted Chameleon's motion and dismissed the remaining motions as moot.

IV. FACTORS WHICH WARRANT COMMISSION CONSIDERATION

A. The Bureau's action is based on an erroneous finding as to material questions of fact.

The facts, when considered as a whole, do not support the FCC's actions. The FCC's rescission of KFCC's STA was based on erroneous interpretations of various facts and/or were spurious problems iatrogenically created by the Commission's own actions.

1. There were two objections filed to KFCC's STA alleging interference. The FCC used these objections as a rationalization for its ordered reduction in power for the STA. One was formally withdrawn See Settlement Agreement (Exhibit "9"). Although the other objection filed by KWHI has not yet been withdrawn, KWHI's management has verbally assured Chameleon that it would not object to KFCC's application to change the STA site into a

permanent one. Indeed, the cut-off period for public comment on the application ended on October 6, 1995 and, to Chameleon's knowledge, no objections were filed by any party. See Werlinger Affidavit (Exhibit "10")

2. The reduction in the STA power, as ordered by the FCC, accounts for a major part of the present deficient signal in Bay City, KFCC's city of license. See Werlinger Affidavit (Exhibit "10") Even at the reduced power, continuance of the STA is consistent with previous FCC policy as evidenced by the fact that the Commission's staff had historically granted STA to stations which do not place the required city grade signal over their city of license pending the filing and review of Form 301 requests for new, permanent transmitter sites.¹⁰

The Commission's staff has repeatedly exercised a great deal of latitude and discretion in granting Special Temporary Authorization and a significant number of stations have remained at temporary

¹⁰Over the last several years, STAs have been granted to WINS at New York NY; WBIV (formerly WBPS) at Natick, MA; WNJR at Newark NJ; KOPY at Georgetown, TX; KCNW at Mission, KS; WWJZ at Mount Holly, NJ; KVCJ at Mineola, TX; and KBBV at Big Bear Lake, CA.

These are but a few of the AM stations granted STAs which do not place a city grade signal over their respective communities of license. It is by no means a complete list of such stations and it does not include FM facilities in similar situations. In each case, as a result of loss of a transmitter site or other extraordinary circumstances, the Commission's staff has granted an STA to a station which did not place city grade daytime and/or nighttime interference-free coverage over its city of license. In fact, in the case of KBBV at Big Bear Lake, California, the Commission's staff approved use of a dipole antenna into a 35 foot (11 meter) antenna which produced only a 0.50 mV/m contour that covered less than three miles (4.8 km).

sites, under an STA, for years.¹¹ Granting KFCC's STA at the currently operational site was NOT precedent setting for the Commission's staff. Indeed, if providing the city of Bay City, Texas with the maximum service from the STA site were the staff's major concern, it would have left in place the originally granted 1 kw operation inasmuch as it was clear from all engineering statements that the 1 kw operation reduced previously licensed overlap to KWHI at Brenham, Texas.

3. Despite contentions to the contrary by the FCC's AM Branch, there was no intentional, material misrepresentation by Chameleon Radio in applying for the STA. See STA Application (Exhibit "11"). See, also, Werlinger Affidavit, (Exhibit "10")

4. For these reasons, the FCC's actions in rescinding the STA were based on erroneous findings of material fact and, as such, were arbitrary, capricious, and unfounded in either fact or law.

¹¹The latitude and discretion exercised by Commission staff is clearly demonstrated in the STA granted to WJMD at Elizabeth, NJ which was allowed to construct and to begin operations on the AM expanded band. WJMD has neither lost its transmitter site nor has its operational status changed. Nevertheless, even though Elizabeth, NJ receives city grade AM service from a number of New York area stations, WJMD is the first expanded band facility in the nation. The granting of the STA to WJMD prior to the final implementation of the expanded band rulemaking effectively introduces through Special Temporary Authorization, a new AM broadcast service to the nation's largest metropolitan area.

B. The Bureau's action involves a question of policy which should be revised, as contrary to the public interest.

1. Cancellation of the STA will result in the infliction of immediate and irreparable harm to Chameleon Radio which now is faced with a hobson's choice: it can immediately go off the air and remain silent until its application for permanent change (FCC Form 301) is approved, or it can attempt to find a transmitter site that will allow it to return to Bay City.

The first alternative--immediately going off the air--will result in almost instantaneous business failure and bankruptcy for Chameleon Radio. See Werlinger Affidavit (Exhibit "10").

In the other alternative, the minority and ethnic listeners served by the foreign language programmers who broadcast on KFCC cannot be reached by the station if it returns to Bay City. The station will, in only a very short time, be forced into financial bankruptcy and will go silent--perhaps not immediately, but in all probably within a matter of only a few weeks. Id.

2. In either case, the Form 301 Application for permanent change of location becomes merely of academic interest since Chameleon will be out of business before it can effect the permanent change.

As a result, a valuable public service will have been lost forever. Chameleon's foreign language radio programs are a major means for foreign and ethnic minorities to learn of severe weather warnings, natural disasters and other emergency information. Even routine but vital information--such as news, weather, and traffic reports--will be silenced if KFCC goes silent.

3. Nearly forty programmers, representing eleven different languages from five different continents will lose their only available radio outlet and the international audience that depends upon these programmers will be deprived of their only radio source of information, education, and entertainment. As a result, both the programmers and their audiences will suffer great hardship.

As demonstrated above, the Bureau's cancellation of Chameleon's STA is flawed for two reasons: 1) the action is based on erroneous findings of important or material questions of fact; and 2) the cancellation of Chameleon's STA is not in accordance with sound public policy and is contrary to the public interest.

V. MANNER IN WHICH ACTION BELOW SHOULD BE CHANGED

For the reasons stated above, the stay of the cancellation of Chameleon's STA should be reaffirmed by the full Commission and extended until a final action is taken on Chameleon's Form 301 Application for a permanent change of transmitter location. Further, the STA's original power of 1,000 watts daytime and 100 watts night should be reinstated.

Chameleon, pursuant to Section 1.115 of the Commission's Rules, hereby petitions the Commission to take such action.

Respectfully submitted,

CHAMELEON RADIO CORPORATION
By Counsel



Adrian Cronauer, Esq.

November 2, 1995

MALONEY & BURCH
Suite 1200
1100 Connecticut Ave., NW
Washington, DC 20036-4101
202\293-1414

LIST OF EXHIBITS

1. **Special Temporary Authorization**
2. **Letter Ordering Reduction of Power**
3. **Notification of STA Rescission**
4. **Salem's withdrawal of Objection to STA**
5. **Notice of 301 Acceptance for Filing**
6. **Notice to Cease Operations**
7. **KFCC's 9/22/95 Response to FCC letter of 9/8/95**
8. **10/11/95 Letter from Linda Blair staying STA**
9. **Settlement Agreement between Salem & Chameleon**
10. **Werlinger Affidavit**
11. **Application for STA**

FCC MAIL SECTION

MAY 11 8 55 AM '95 FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554

May 5, 1995

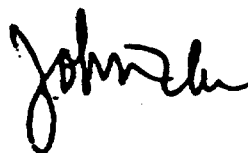
DISPATCHED BY

IN REPLY REFER TO:
8910-JAV
STOP CODE 180082

Chameleon Radio Corporation
10865 Rockley Road
Houston, TX 77099

Radio Station KIOX-AM
Day City, TX

This is in reference to licensee letter dated 4/21/95. Effective 5/5/95. Temporary authority granted to relocate the station .25 Km from presently authorized site to the geographic coordinates NL: 29° 38' 10" WL: 95° 32' 32" due to loss of authorized site. Operating power will be 1,000 watts during daytime hours and 100 watts during nighttime hours utilizing a nondirectional mode on a frequency of 1270 kHz. The type antenna to be used is a self-support, series excited, folded unipole 54.86 m (180') tower producing an inverse distance field of 323.5 mv/m/kW. This tower is one of the three existing towers array. You are cautioned that proceeding with this authority and any construction incident there to are undertaken entirely at your own risk and that this authority does not in any way prejudice what ever action may be taken with regard to your construction permit when filed. This authority is granted in consideration of your good faith and representation that you will submit a completed and acceptable FCC Form 301 prior to expiration of this authority. Reduce power further if interference complaints are received. Your obligation to notify regional F.A.A. of the proposed tower of any possible lighting or marking requirements which are governed by Part 17 of the F.C.C. Rules with which you must comply as a precondition to use this authority. This authority expires 8/1/95.



John Vu
Engineer

James R. Burtie
Chief, AM Branch
Audio Services Division
Mass Media Bureau

EIC- Houston

EXHIBIT

FCC MAIL SECTION

MAY 16 3 14 PM '95

FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554

May 12, 1995

DISPATCHED BY

IN REPLY REFER TO:
8910-JAV
STOP CODE 180082

Chameleon Radio Corporation
10865 Rockley Road
Houston, TX 77099

Re: Radio Station KIOX-AM
Bay City, TX

This supersedes STA letter dated 5/5/95 to correct transmitter location and power of operation. This is in reference to licensee letter dated 4/21/95. Effective 5/5/95. Temporary authority granted to relocate the station from presently authorized site to the geographic coordinates NL: 29° 38' 14" WL: 95° 32' 24" due to loss of authorized site. Operating power will be 300 watts during daytime hours and 50 watts during nighttime hours utilizing a nondirectional mode on a frequency of 1270 kHz. The type antenna to be used is a self-support, series excited, folded unipole 54.86 m (180') tower producing an inverse distance field of 323.5 mv/m/kW. This tower is one of the three existing towers array. You are cautioned that proceeding with this authority and any construction incident there to are undertaken entirely at your own risk and that this authority does not in any way prejudice what ever action may be taken with regard to your construction permit when filed. This authority is granted in consideration of your good faith and representation that you will submit a completed and acceptable FCC Form 301 prior to expiration of this authority. Reduce power further if interference complaints are received. Your obligation to notify regional F.A.A. of the proposed tower of any possible lighting or marking requirements which are governed by Part 17 of the F.C.C. Rules with which you must comply as a precondition to use this authority. This authority expires 8/1/95.



James R. Burtie
Chief, AM Branch
Audio Services Division
Mass Media Bureau

John Vu
Engineer

EIC- Houston

EXHIBIT

2

FCC MAIL SECTION

MAY 19 12 54 PM '95

FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554
May 18, 1995

DISPATCHED BY

IN REPLY REFER TO:
8910-JAV
STOP CODE 1800B2

Chamelon Radio Corporation
10865 Rockley Road
Houston, Tx 77099

Re: Radio Station KIOX-AM
Bay City, TX

This refers to your above-captioned Special Temporary Authority (STA) which was granted on May 5, 1995. Effective 5/18/95. The STA was granted to allow KIOX-AM continuing to serve the public. However, further study of your STA request reveals that KIOX-AM does not cover its city of license, Bay City, TX from the proposed transmitter site in contravention of Section 73.24(i) of the rules. Therefore, the grant of your STA is **HERE BY RESCINDED**, and the licensee should return to its licensed site. Alternatively, if necessary, KIOX-AM should request an STA to remain silence until its finds a new site which covers Bay City.

John Vu

John Vu
Engineer

James R. Burtle
Chief, AM Branch
Audio Services Division
Mass Media Bureau

EIC- Houston

I hereby stay the effectiveness of the order
James R. Burtle
Chief Audio Services Div
5-25-95

EXHIBIT

3

ANN BAYENDER
JAMES A. CASEY
KAREN L. CASSER
ANNE GOODWIN CRUMP
VINCENT J. CURTIS, JR.
PAUL J. FELDMAN
ERIC FISHMAN
RICHARD HILDRETH
EDWARD W. HUMMERS, JR.
FRANK R. JAZZO
CHARLES M. KENNEDY
KATHRYN A. KLEIMAN
PATRICIA A. MAHONEY
M. VERONICA PASTOR
GEORGE PETRUTSAS
LEONARD R. RAUSH
JAMES P. RILEY
MARVIN ROSENBERG
KATHLEEN VICTORY
HOWARD M. WEISS
* NOT ADMITTED IN VIRGINIA

FLETCHER, HEALD & HILDRETH, P.L.C.

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ROBERT L. HEALD
(1954-1983)
PAUL D.P. SPEARMAN
(1938-1982)
FRANK ROBERSON
(1938-1981)
RUSSELL ROWELL
(1948-1977)

RETIRED
EDWARD F. KENEMAN
FRANK U. FLETCHER

CONSULTANT FOR INTERNATIONAL AND
INTERGOVERNMENTAL AFFAIRS
SHELDON J. KRYE
U. S. AMBASSADOR (H&L)

OF COUNSEL
EDWARD A. CARNE

WRITER'S NUMBER
(703) 80450

September 1, 1995

VIA HAND DELIVERY

Mr. William F. Caton
Acting Secretary
Federal Communications Commission
1919 M Street, N.W., Room 222
Washington, D.C. 20554

Re: KFCC(AM)
Bay City, Texas

Dear Mr. Caton:

Salem Communications Corporation and its wholly owned subsidiary, South Texas Broadcasting, Inc., licensee of Station KENR, Houston, Texas (collectively "Salem") hereby withdraws its request for cancellation of the Special Temporary Authority issued to Chameleon Radio Corporation for the operation of KFCC(AM), Bay City, Texas. The request was made in South Texas's letter dated May 23, 1995 and was followed by another letter dated June 20, 1995. Those letters should be dismissed and no further consideration given to the request for cancellation of the STA.

Furthermore, Salem is aware of the currently pending application (BP950804AC) by KFCC requesting changes in its facilities. Salem does not object to the granting of facilities requested by KFCC in the above-mentioned application.

Yours very truly,

James P. Riley
Counsel for
Salem Communications Corporation

cc: Mr. Larry D. Eads
Chief, Audio Services Division, FCC
bc: Mr. Don Werlinger
Eric H. Halvorson, Esq.

EXHIBIT

4

**AM BROADCAST APPLICATIONS ACCEPTED FOR FILING AND NOTIFICATION
OF CUT-OFF DATE**

Report No. A-198

Released: September 6, 1995

CUT-OFF DATE: October 6, 1995

Notice is hereby given that the applications listed in the attached appendix are hereby accepted for filing. They will be considered to be ready and available for processing after October 6, 1995. An application in order to be considered with any application appearing on the attached list or with any other application on file by the close of business on October 6, 1995 which involves a conflict necessitating a hearing with any application on this list must be substantially complete and tendered for filing at the close of business on October 6, 1995. Petitions to deny any application on this list must be on file with the Commission no later than the close of business October 6, 1995.

BMP-950307AD WBAJ Blythewood South Carolina

Michael B. Gliner

Has: 880 kHz 1.6 kW DA-D

Req: 890 kHz, 0.001 kW 11 kW (9 kW-CH) ND-1, U

BP-950322AB KHNC, Johnstown Colorado

Donald A. and Sharon E. Wiedeman

Has: 1360 kHz 0.45 kW, 0.5 kW-LS, DA-2 U

Req: 1360 kHz 0.45 kW, 4 kW-LS, DA-2, U

BP-950531AC WTCM, Traverse City, Michigan

WTCM Radio Inc

Has: 580 kHz, 0.5 kW, 5 kW-LS; DA-2, U

Req: 580 kHz, 0.8 kW, 15 kW-LS, DA-2, U

BP-950711AC New, Gunnison, Colorado

John Harvey Rees

Req: 1490 kHz, 1 kW, ND-1, U

BP-950719AB WBZT, West Palm Beach, Florida

American Radio Systems License Corp.

Has: 1290 kHz, 5 kW, DA-N, U

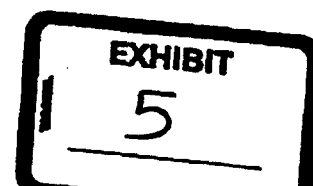
Req: 1290 kHz 4.9 kW 10 kW-LS, DA-2, U

BP-950804AC KFCC, Bay City, Texas

Chameleon Radio Corporation

Has: 1270 kHz, 1 kW. DA-N, U (Bay City, TX)

Req: 1270 kHz, 0.85 kW, 2.5 kW-LS, DA-2, U(Missouri City, TX)



FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

SEP 8 1995

**In Reply Refer To:
1800B3-KDY**

VIA TELECOPIER AND CERTIFIED MAIL-RETURN RECEIPT REQUESTED

**Mr. Don Werlinger,
President
Chameleon Radio Corporation
10865 Rockley Road
Houston, Texas 77099**

**In re: KFCC(AM) Bay City, Texas
(formerly KIOX(AM))
Notice of Special Temporary
Authority Cancellation**

Dear Mr. Werlinger:

We have on file Chameleon Radio Corporation's ("Chameleon")¹ August 4, 1995 request for extension of Special Temporary Authority ("STA") to operate KFCC(AM), Bay City, Texas,² at variance from its licensed parameters.³ As set forth below, we deny Chameleon's request for extension.

Background. On April 18, 1995, the Commission approved an application assigning

[1] Don Werlinger ("Werlinger") is listed in the Commission's records as President of Chameleon.

[2] Station KFCC(AM) is licensed to serve Bay City, Texas, on 1270 kHz with a transmitter power of 1000 watts (DA-N), from a site 5.8 km northeast of Bay City, Texas ("Bay City Site"). The Commission's records indicate that KFCC(AM)'s main studio is located at the Bay City Site.

[3] Two Houston-area licensees, South Texas Broadcasting, Inc. ("South Texas") and Tom S. Whitehead ("Whitehead") have filed objections to the STA, alleging, among other things, that the facilities specified in the subject STA cause interference to their respective stations. Both objections remain pending. By letter dated September 1, 1995, South Texas requested withdrawal of its objection.

EXHIBIT

6

KFCC(AM) from Landrum Enterprises ("Landrum") to Chameleon (BAL-950216EA). On April 21, 1995, Chameleon, filed the subject request for STA. Chameleon claimed a need to relocate the station's transmitter "[d]ue to the loss of its currently licensed site." Chameleon proposed to operate from "rural southwest Harris County" ("Harris County Site") at coordinates N29-38-10, W95-32-22 and requested authority to operate nondirectionally at 1000 watts day, 250 watts night. Chameleon further proposed "to utilize a [180'] tower supporting a folded unipole antenna system." Chameleon also stated that, on April 20, 1995, it sought "FAA authority to construct." Claiming that the STA operation will produce no prohibited overlap - "with the exception of KWHI(AM), Brenham, Texas" - Chameleon stated that it intended to file an FCC Form 301 application to seek permanent authority for operations from the Harris County Site. Pursuant to an oral conversation with the Commission staff, Mr. Werlinger was informed that this STA could not be granted because it appeared to involve construction of a new tower.

In response, on May 2, 1995, Chameleon amended its STA request. Chameleon submitted an amended Figure E-1 correcting the coordinates of the above-noted "existing 180' tower" to N29-38-14, W95-32-24. Chameleon stated that "[t]he tower in our original proposal will be the center tower of what will be a three tower array." Chameleon also stated that it intended to file an FCC Form 301 "within 30 days of placing the STA on the air."

On May 5, 1995, the Commission staff granted Chameleon STA to operate with the parameters described in the initial STA request. That letter indicated that the staff believed the STA site to be only 0.25 km from the licensed site.⁴ After further study, though, on May 12, 1995, the Commission staff superseded its May 5 letter to instead specify the amended STA tower coordinates and to reduce KFCC(AM)'s operating power to 300 watts daytime and 50 watts nighttime because of potential interference that was called to the staff's attention. Subsequently, on May 18, 1995, the Commission staff issued a letter to Chameleon rescinding the STA ("Rescission Letter"). The Commission staff stated that further study had revealed that KFCC(AM) could not cover its community of license, Bay City, Texas, from the Harris County Site in apparent contravention of 47 C.F.R. 73.24(i). The Rescission Letter, however, was stayed on May 25, 1995 by action of the Chief, Audio Services Division, Mass Media Bureau, pending further clarification of the record.

By letter dated July 25, 1995, the Chief, Audio Services Division requested Chameleon to respond to several questions regarding the circumstances giving rise to Chameleon's necessity for STA, facts concerning KFCC(AM)'s licensed facility and construction efforts taken pursuant to the STA. See July 25, 1995 Letter From Larry D. Eads, Chief, Audio Services Division to Mr. Don Werlinger ("Inquiry Letter"). The Inquiry Letter requested

⁴ The May 5th letter was incorrect. The actual site being requested by Chameleon was 80 km from its licensed site. Because Chameleon's amended Figure E-1 depicted an existing 180' foot tower as being "0.25 km from [KFCC(AM)'s] licensed site" the staff inadvertently assumed that the proposed STA site was actually only 0.25 km from the Bay City Site.

Werlinger to:

1. Provide specific details concerning: (a) the circumstances under which Chameleon "lost" the Bay City Site and the date that the "loss" occurred; (b) Chameleon's present legal right of access to the Bay City Site in view of the sublease given to Landrum; (c) the present status of the KFCC(AM) transmission facility at the Bay City Site, and if the status has been changed, the date of any such change and all details concerning the nature and extent of that change; and (d) the present address of the KFCC(AM) main studio.
2. Furnish a showing demonstrating that no better site - other than the Harris County Site - exists from which KFCC(AM) can maintain coverage as closely as possible to the licensed service, including principal community contour coverage of Bay City, Texas.
3. Provide: (a) the name, address and telephone number of the [Harris County Site] owner; (b) any lease or written agreement providing for Chameleon's access to the site; (c) whether Chameleon's principals, or its officers or directors, directly or indirectly, ordered construction of a tower on that site and if so, the date construction of the tower began; (d) the name, address and telephone number of the tower construction contractor; and (e) provide a copy of the FAA filing discussed in the April 21, 1995 STA request and a copy of the FAA Determination of No Hazard.
4. Provide the exact date of consummation of the assignment of KFCC(AM) from Landrum to Chameleon (BAL-950216EA).

After not having received a request for extension of the STA or a timely response to the Inquiry Letter, the Commission staff issued a letter on August 11, 1995 informing Chameleon that the STA had been terminated ("Rescission Letter 2").⁵ On August 11, 1995, Chameleon faxed a date-stamped copy of its extension request and response to the Inquiry Letter ("Response Letter"). Chameleon stated that a copy of this letter had been mailed to the Commission on August 4, 1995.⁶ By letter dated August 11, 1995, the Commission staff

⁵ See August 11, 1995 Letter from Larry D. Eads, Chief, Audio Services Division to Mr. Don Werlinger.

⁶ On August 25, 1995, Whitehead faxed a reply to the Response Letter to the Chief, Audio Services ("Reply"). In that letter, Whitehead challenges Chameleon's statements of fact contained in the Response Letter and renews his request for termination of the STA. We will consider the issues raised by the Reply and incorporate those allegations with his earlier-filed

stayed Rescission Letter 2 pending study of the material submitted in the Response Letter.⁷ Meanwhile, on August 4, 1995, Chameleon had filed an application on FCC Form 301 to change KFCC(AM)'s community of license from Bay City, Texas, to Missouri City, Texas, and to modify the station's facilities to operate from the Harris County Site.

With respect to the specific questions identified above, the Response Letter provides the following:

(1) Question 1: Chameleon provides no further information to support its claim in the STA request that it needed to relocate the KFCC(AM) transmitter "[d]ue to the loss of its currently licensed site." Chameleon also does not discuss its present legal right of access to the Bay City Site. Additionally, the Response Letter does not address the present status of KFCC(AM)'s licensed facility at the Bay City Site or any technical changes, if any, that may have taken place at that site. Furthermore, Chameleon does not identify the current location of the KFCC(AM) main studio. Chameleon's only responsive statements regarding the STA are: (1) that it was "making creative use of whatever rules presented themselves in order to save both its business and the outlet it had created for the international community in Houston" Response Letter at 17; and (2) that it "has gone to the outer limits in dealing with the Commission's Rules regarding Special Temporary Authorization. . . ." Response Letter at 19.

(2) Question 2: Chameleon provides no information indicating that it had considered any other site by which KFCC(AM) could maintain its presently licensed service to Bay City.

(3) Question 3: Chameleon states that the tower is owned by Mr. Joe McClish of Economy RF Construction Company, an Austin Texas Communication Company. Response Letter at 10. Chameleon indicates that Mr. McClish, in the course of an April 26, 1995 telephone conversation, expressed his interest in owning the tower and agreed to erect it before May 1, 1995. *Id.* Chameleon also states that none of its funds were expended for the tower's construction and that no "broadcast equipment was placed on the site until after the grant of the STA." *Id.* Chameleon reports that installation of broadcast equipment on the site began immediately upon grant of the STA and was completed by May 7, 1995. *Id.* Chameleon contends that this tower does not require FAA approval. *Id.* Chameleon does not, however, submit a copy of the FAA filing discussed in its April 21, 1995 STA request.

(4) Question 4: Chameleon states that the closing of the assignment from Landrum occurred on April 20, 1995.

Discussion. Based upon our careful review of the Response Letter, we conclude that

objection noted above.

⁷ See August 11, 1995 Letter from Larry D. Eads, Chief, Audio Services Division to Mr. Don Werlinger.

Chameleon's April 21, 1995 stated basis for the STA -- "loss of its currently licensed site" -- is not supported by the facts in the record. Our policy is to require that the site "loss" be beyond the applicant's control before granting STA.⁸ Based upon material submitted in the Response Letter, Chameleon appears to have voluntarily abandoned its licensed site, and its licensed Bay City, Texas, broadcast service, in order to fulfill identified contractual obligations. In the Response Letter, Chameleon discusses in great detail a Houston licensee's decision to terminate a programming agreement made between the licensee's predecessor and a Chameleon-affiliated programming supplier.⁹ Under this agreement, Chameleon had supplied programming produced by various international broadcasters to that licensee's Houston station. Upon receiving a notice of the agreement's termination from the licensee, Chameleon "moved with all haste toward finding an acceptable transmitter site in southwest Houston to which it could move." Response Letter at 9. The "need" for an acceptable Houston broadcast signal thus appears to have formed the basis for Chameleon's STA request rather than a "loss" of site that was beyond Chameleon's control.¹⁰ Chameleon's contractual obligations to programmers seeking a Houston broadcast service do not provide a basis for granting STA that deprives Bay City, Texas, of a licensed service that it has enjoyed for more than forty years.

We find that Chameleon's use of STA to introduce a new broadcast service to Houston, Texas is both a violation of our STA policies and the licensing procedures of the Communications Act of 1934, as amended (the "Act"). Section 309 of the Act provides that the Commission may not grant an application for facility modifications of the type represented by Chameleon's STA until the Commission staff has examined the subject application, provided a public notice of the acceptance of the application for filing and allowed a thirty-

⁸ Section 73.1635(a) of the Commission's Rules provides for the issuance of an "STA to a licensee to permit the operation of a broadcast facility for a limited period at a specific variance from the terms of the station authorization or requirements of the FCC rules applicable to the particular class of station." 47 C.F.R. §1635(a). Any STA request must "fully describe the proposed operation and the necessity for the requested STA." 47 C.F.R. § 73.1635(a)(2).

⁹ According to the Response Letter, Chameleon's principal was also the principal of the subject programming supplier.

¹⁰ Whitehead contends that Chameleon's abandonment of the Bay City Site may have been voluntary. In documents associated with the above-referenced assignment of license from Landrum, we note that Chameleon assigned the rights of some portion of the Bay City Site back to Landrum. The Response Letter fails to address our question regarding what legal rights Chameleon has with respect to the Bay City Site, in view of that assignment of lease rights. Chameleon has also not responded to our query regarding the condition of the licensed Bay City Site's transmission facilities. We note, however, that the Commission's records indicate that Landrum was operating KFCC(AM) from that site at the time of the assignment of license to Chameleon.

day period for comment on the application by relevant parties. 47 U.S.C. § 309. To the extent that Chameleon's admitted "creative use" of the STA is an attempt to foreshorten the statutory procedures mandated by the Act, we decline to permit circumvention of those requirements by use of STA."

We further note that it is not our policy to authorize new construction intended to be for permanent operations pursuant to STA. The Commission staff rejected Chameleon's April 21, 1995 STA request because it proposed constructing a new permanent tower. Chameleon's amended May 2, 1995 exhibit had removed the term "new" and instead indicated that the tower to be used was an "existing" structure. We note, however, that the Response Letter provides conflicting dates as to when the tower was actually erected on the Harris County Site.¹² The Response Letter does state, though, that its "agreement" with the tower contractor to erect a tower on the Harris County Site was confirmed in a telephone conversation on April 26, 1995. Response Letter at 10. Therefore, we conclude that the tower was constructed sometime between April 26 and May 8, the date that Chameleon reports it began operations from the Harris County Site. Response Letter at 12. Because it appears that this tower was erected for the primary purpose of providing service under the STA, and with the intention of it becoming a permanent structure for operations (see May 2, 1995 letter from Chameleon), we find that extending the STA under such conditions would clearly violate our established STA policy.

We wish to address two remaining matters regarding the Response Letter. First, Chameleon states that "after very careful consideration that Mr. Werlinger made the decision to disregard [the Recession Letter]." Response Letter at 15. We caution Chameleon, and note herein, that pursuant to Section 503(b) of the Act unauthorized operation of a broadcast station can subject a licensee to forfeiture. Second, we note that Chameleon failed to address several specific questions in the Inquiry Letter. We remind Chameleon that it is a violation of Commission Rules to make a "willful material omission bearing on any matter within the jurisdiction of the Commission." 47 C.F.R. § 1.17. In any event, for the purposes of our determination as to whether the STA should be extended, we need not require additional information from Chameleon concerning aspects of that STA operation. However, with respect to our specific question concerning the specific present location of the KFCC(AM) main studio, we note that absent limited exceptions, a licensee may not remove a station's

¹¹ We note that Chameleon's subsequent filing of an FCC Form 301 application seeking a construction permit to build permanent facilities at the Harris County Site and to change KFCC(AM)'s community of license to Missouri City, Texas does not provide an independent basis supporting extension of the subject STA.

¹² At one point Chameleon states that "[b]y Monday, May 1, 1995 the Rohn model 25 tower was in place." Response Letter at 10. Subsequently, Chameleon states that "working nonstop, the Chameleon crew had the tower in the air by 8:30 pm, Saturday May 6." Response Letter at 24.